

Date of Hearing: April 5, 2011

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS

Paul J. Cook, Chair

AB 713 (Block) – As Introduced: February 17, 2011

SUBJECT: State militia: members: legal benefits.

SUMMARY: This bill clarifies legal benefits and protections of service members with regard to legal obligations and civil liabilities. The bill also extends some legal benefits and protections of service members to the service members' dependents.

Specifically, this bill:

- 1) Clarifies the date range during which a service member may petition for relief from civil obligations and liabilities; the range is specified to be any time during the service member's most current period of military service or within six months thereafter;
- 2) Specifies which civil obligations and liabilities may be the subject of a petition for relief. The service member may seek relief from any obligation or liability incurred by the service member prior to the service member's orders for his or her most current period of military service or in respect of any tax or assessment whether falling due prior to or during the service member's most current period of military service. The orders date provides a date certain for the start and end of a period of military service;
- 3) Directs the court to consider, in deciding on petitions for relief, the effect of the service member's most current period of military service. Unless the court finds that the ability of the service member to comply with the terms of the obligation or liability or to pay the tax or assessment has not been materially affected by reason of the service member's most current period military service, it may grant specified relief; and
- 4) At a court's discretion, extends to dependents a temporary interest rate protection cap on interest bearing obligations incurred prior to the service member's military service.

EXISTING LAW: Under existing law, service members may seek relief from certain obligations and liabilities at any time during a period of military service or within six months thereafter. Further, service members may seek relief from obligations only if those obligations were incurred prior to the service member's active military service.

Existing law extends most of the protections from civil liabilities and obligations that are granted to service members to the dependents of those service members. For example, eviction protection, repossession protection, foreclosure protection, the right to defer installment payments and loans and the ability to terminate leases early are all extended to service members' dependents. For no reason specified, except perhaps to parallel the federal Act, the interest cap section was not included in the range of code sections extending rights and protections to service members' dependents (MVC § 409.5). In the corresponding sections of the federal Servicemembers Civil Relief Act (SCRA) 50 U.S.C. App. §§501–596 (19 Dec 2003), interest rate relief is also not granted to dependents.

FISCAL EFFECT: Unknown.

COMMENTS: The minor changes to Military and Veterans' Code section 409.3 contained in this bill add clarity in two respects. First, the window during which a service member may seek relief from obligations, liabilities, taxes or assessments is clarified; the petition for relief must be brought during the most current period of military service or within 6 months thereafter. Second, the window of time during which obligations or liabilities (other than taxes or assessments) must have been incurred or come due is refined; the obligation or liability must have been incurred or come due before orders for the service member's most current period of military service. The addition of the orders clause provides a date certain for commencement of military service. Taxes or assessments are eligible for relief whether falling due prior to or during the most current period of military service.

The sections at issue in this discussion are intended to protect National Guard and reserve service members who transition back and forth between active service and reserve or part-time service according to the needs of the State or Nation. These are citizen-soldiers. As the law is written now, in the case where such a service member incurs a liability during a period of military service, he or she may not seek relief from that liability. At first blush this seems equitable; at the time when the service member incurred the obligation he or she was in active service and presumably aware of his or her financial circumstances.

For example, a service member purchases a motorcycle on credit during active service and then later returns to reserve status. The law as written does not allow the service member access to relief from the motorcycle loan because it was incurred during active service. However, as is now common, service members are routinely ordered to active duty on multiple occasions. As the law is currently drafted, if several years pass and the service member is, for example, deployed multiple times, no matter the impact of the current period of military service, the service member is barred from seeking relief from the motorcycle loan because it was incurred during a period of active service. In short existing law does not take into account the modern frequency of recurring deployments and activations and their potential for cumulative financial impacts. Should this bill become law, a court must still evaluate the impact of the current period of military service before relief will be granted from an obligation.

Existing California law evidences intent to protect service members' dependents from financial hardships which might arise during the period of active service of the service member, for example during a deployment. Multiple protections are extended to the dependents including protection from: eviction; repossession; foreclosure; tax/lien collection proceedings; and under California law, the ability to defer installment payments including credit cards and auto loans. Dependents may cancel leases and are granted the right to petition the court for protection from various liabilities. The SCRA does not extend this specific protection to dependents; however extending this benefit to dependents is aligned with the evidence of California legislative intent shown by all of the aforementioned protections extended to dependents to protect them from consequences of the service member's period of active duty.

PROPOSED AUTHOR'S AMENDMENTS:

The author desires to amend the bill:

- 1) On page 2, line 4, after "her" insert: most current

- 2) One page 2, line 8, after "her" insert: most current

These amendments are technical and will not change the substance of this analysis.

REGISTERED SUPPORT / OPPOSITION:

Support

Military Department, Office of the Adjutant General, California Credit Union League
American Legion-Department of California, AMVETS-Department of California, California
State Commanders Veterans Council.

Opposition

None.

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